

October 1, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Notice

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120
(also CS Docket Nos. 00-96 and 00-2)

Dear Ms. Dortch:

On Tuesday, September 30, representatives of Comcast Corporation met with Johanna Mikes, Legal Advisor to Commissioner Adelstein, to discuss the above-captioned proceeding. Subsequently, we also discussed this proceeding with various representatives of the Media Bureau: Ben Bartolome, Steve Broeckhaert, Rick Chesson, Rosalee Chiara, Ben Golant, Eloise Gore, Bill Johnson, Mary Beth Murphy, and Ron Parver. Comcast was represented by James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, and the undersigned.

The substance of our presentation was substantially the same as described in detailed *ex parte* reports filed in July and August in this docket, based on Comcast's reply comments and previously-filed summary of position. In addition, we discussed several aspects of judicial decisions that are pertinent to the must-carry debate. We cited Justice O'Connor's statement in *Turner I* that must-carry is fundamentally about whether control over the programming carried on a cable system will be exercised by the owner of the cable system or by the government, and we cautioned that any decision about expanding the government's role in this area should be made soberly, cautiously, and with great respect for the constitutional implications. We discussed ways in which dual must-carry and digital multicast must-carry proposals differ from the analog must-carry requirement that was upheld in *Turner II*; we explained that many of the marketplace facts emphasized in the majority opinions in the *Turner* cases have changed over the intervening period; we emphasized that the *Turner II* decision explicitly relied on Congress's desire "to preserve the *existing* structure" of broadcast television and not on any legislative findings pertaining to the digital transition. We also discussed the D.C. Circuit's *Bell Atlantic* and *GTE* collocation decisions and opined that these underscore the pains the Commission must take not to overreach in allowing one party to occupy the private property of another -- even when there is explicit statutory authority, even when the party whose property is being

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occupied is receiving appropriate compensation, and even when no First Amendment rights are at stake.

This letter is filed pursuant to Section 1.1206(b)(2) of the Commission's rules. Please let me know if you have any questions.

Respectfully submitted,

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